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Duncan Security Consultants, Inc. and Safety Officers Union Local 2160, Northern California Carpenters Regional Council. Case 32-CA-20211-1

July 15, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

The General Counsel seeks a default judgment¹ in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by the Union on November 27, 2002, the General Counsel issued the complaint on January 31, 2003, against Duncan Security Consultants, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On April 2, 2003, the General Counsel filed a Motion for Summary Judgment with the Board. On April 9, 2003, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively states that unless an answer is filed by February 14, 2003, all the allegations in the complaint will be considered admitted.² Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated February 27, 2003, notified the Respondent that

¹ The General Counsel's motion requests summary judgment on the ground that the Respondent has failed to file an answer to the complaint. Accordingly, we construe the General Counsel's motion as a motion for default judgment.

² The copy of the complaint served on the Respondent by certified mail was subsequently returned to the Regional Office on March 14, 2003, marked as "unclaimed." The Respondent's failure or refusal to accept certified mail cannot serve to defeat the purposes of the Act. See, e.g., *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986).

unless an answer were received by March 5, 2003, a motion for default judgment would be filed.³

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's motion for default judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Los Angeles, California, has been engaged in providing security services to the U.S. Government and commercial entities, including U.S. Coast Guard Station in Alameda, California. During the calendar year ending December 31, 2002, the Respondent, in the course and conduct of its business operations, received in excess of \$50,000 for services performed for the U.S. Government. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Safety Officers Union Local 2160, Northern California Carpenters Regional Council, the Union, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Sharon Duncan occupied the position of the Respondent's vice-president and human resources director and is now, and has been, a supervisor of the Respondent within the meaning of Section 2(11) of the Act and/or an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent, herein called the unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time security officers employed by Respondent under its contract with the U.S. Government to provide armed security officers at the United States Coast Guard Station in Alameda, California; excluding all office clerical employees, and supervisors as defined in the Act.

At all times since August 31, 2000, the Union has been the designated exclusive collective-bargaining representative of the employees in the unit, and since that date the

³ On March 12, 2003, the Region sent another reminder letter to a different address that the Region had for the Respondent, advising the Respondent of the deadline of March 18, 2003, for filing an answer to the complaint. At the time the General Counsel filed his motion, no answer had been received from the Respondent, nor had any extension of time to file an answer been requested by the Respondent.

Union has been recognized as the representative by the Respondent. This recognition has been embodied in an existing collective-bargaining agreement that is effective by its terms for the period August 31, 2000, through March 31, 2005.

At all times since August 31, 2000, the Union, by virtue of Section 9(a) of the Act, has been and is, the exclusive representative of the employees in the unit, for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

On about November 22, 2002, the Respondent ceased its business operations at the U.S. Coast Guard Station in Alameda, California, without prior notice to the Union and without having afforded the Union an opportunity to negotiate and bargain as the exclusive representative of the unit with respect to the effects of such acts and conduct.

On about November 27, 2002, the Union, by facsimile transmission and by letter, requested that the Respondent bargain over the effects of the Respondent's decision to cease doing business at the U.S. Coast Guard Station.

Since on or about November 27, 2002, the Respondent has failed and refused to respond to the Union's November 27, 2002 communications and has failed and refused to bargain with the Union over the effects of the Respondent's decision to cease doing business at the U.S. Coast Guard Station.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, to remedy the Respondent's unlawful failure and refusal to bargain with the Union about the effects of the Respondent's decision to cease doing business at the U.S. Coast Guard Station in Alameda, California, we shall order the Respondent to bargain with the Union, on request, about the effects of its decision. As a result of the Respondent's unlawful failure to bargain in good faith with the Union about the effects of its decision to cease its business operations at the U.S. Coast Guard Station in Alameda, California, the unit employees have been denied an op-

portunity to bargain through their collective-bargaining representative. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to ensure that meaningful bargaining occurs and to effectuate the purposes of the Act, to accompany our Order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violations and to re-create in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the unit employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), as clarified by *Melody Toyota*, 325 NLRB 846 (1998).⁴

Thus, the Respondent shall pay the unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 business days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of its facility on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith.

In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent ceased doing business at the facility to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the unit employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with

⁴ See also *Live Oaks Skilled Care & Manor*, 300 NLRB 1040 (1990). As the complaint and motion are less than clear, however, as to the actual impact on the employees, if any, of the Respondent's decision to cease its business operations at the U.S. Coast Guard Station in Alameda, California, we shall permit the Respondent to contest the appropriateness of such a *Transmarine* backpay remedy at the compliance stage. See *Z&Z Distributing Co.*, 320 NLRB 1031, 1032 fn. 2 (1996), and cases cited there.

F. W. Woolworth Co., 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In view of the fact that the Respondent is no longer doing business at the facility, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its employees who were employed on November 22, 2002, in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Duncan Security Consultants, Inc., Los Angeles and Alameda, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the Safety Officers Union Local 2160, Northern California Carpenters Regional Council, as the exclusive collective-bargaining representative of the employees in the following unit over the effects of its decision to cease doing business at the U.S. Coast Guard Station in Alameda, California. The unit is:

All full-time and regular part-time security officers employed by Respondent under its contract with the U.S. Government to provide armed security officers at the United States Coast Guard Station in Alameda, California; excluding all office clerical employees, and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union concerning the effects on the unit employees of the Respondent's decision to cease doing business at the U.S. Coast Guard Station in Alameda, California, and reduce to writing and sign any agreement reached as a result of such bargaining.

(b) Pay the unit employees their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of its decision to cease doing business at the U.S. Coast Guard Station in Alameda, California on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within

5 days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith; but in no event shall the sum paid to any of the employees exceed the amount they would have earned as wages from the date on which the Respondent terminated operations, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ, with interest, as set forth in the remedy section of this decision.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix"⁵ to the Union and to all unit employees employed at the U.S. Coast Guard Station facility in Alameda, California, on November 22, 2002.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. July 15, 2003

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Peter C. Schaumber, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist any union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with the Safety Officers Union Local 2160, Northern California Carpenters Regional Council, as the exclusive collective-bargaining representative of the employees in the following unit over the effects of our decision to cease doing business at the U.S. Coast Guard Station in Alameda, California. The unit is:

All full-time and regular part-time security officers employed by us under our contract with the U.S. Government to provide armed security officers at the United States Coast Guard Station in Alameda, California; excluding all office clerical employees, and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain in good faith with the Union concerning the effects on the unit employees of our decision to cease doing business at the U.S. Coast Guard Station in Alameda, California, and reduce to writing any agreement reached as a result of such bargaining.

WE WILL pay our unit employees limited backpay in connection with our failure to bargain over the effects of our decision to cease doing business at the U.S. Coast Guard Station in Alameda, California, with interest, as required in the Decision and Order of the Board.

DUNCAN SECURITY CONSULTANTS, INC.